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13 **UNITED STATES BANKRUPTCY COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

16 In re:

18 JOHN JEAN BRAL,

19 Debtor and Debtor-in-Possession.

Case No: 8:17-bk-10706 SC

Chapter 11

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23
**SUPPLEMENT TO MOTION SEEKING:
(1) DISALLOWANCE OF CLAIMS 14 AND 16;
AND (2) STRIKING CLAIMS ALLEGED IN
ADVERSARY NOS. 8:17-AP-01094 AND 8:17-
AP-01092 ON THE GROUNDS THE SAME
WERE FILED BASED UPON FALSIFIED
EVIDENCE [DOCKET NO. 219];
DECLARATIONS OF BETH GASCHEN AND
LORI GAUTHIER FILED CONCURRENTLY
IN SUPPORT THEREOF**

24 **DATE: April 18, 2018**

25 **TIME: 1:30 p.m.**

26 **PLACE: Ctrm. 5C**

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1 **TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE UNITED STATES TRUSTEE AND COUNSEL OF RECORD FOR THE**
3 **BEITLER PARTIES:**

4 John Jean Bral, the above-captioned debtor and debtor in possession (the “Debtor” or
5 “Bral”), hereby files this supplement (the “Supplement”) to that certain *Motion Seeking: (1)*
6 *Disallowance of Claims 14 and 16; and (2) Striking Claims Alleged in Adversary Nos. 8:17-ap-*
7 *01094 and 8:17-ap-01092 on the Grounds the Same Were Filed Based Upon Falsified Evidence*
8 [Docket No. 219] (the “Motion to Strike”). This Supplement (a) provides additional evidence in
9 support of the Motion to Strike, (b) an additional prayer seeking an order striking Proof of Claim
10 Nos. 9 and 11, and (c) provides authorities supporting the contention that the relief sought in the
11 Motion to Strike is also justified under the equitable doctrine of unclean hands.

12 The following declarations are referenced herein: Declarations of John J. Bral (docket 220)
13 (“JB Dec.”), Sean A. O’Keefe (docket 221) (the “SO Dec.”), Ronald Williams (docket 222) (the
14 “RW Dec.”) previously filed in support of the Motion to Strike, and the Declarations of Lori
15 Gauthier (the “LG Dec.”) and Beth Gaschen (the “BG Dec.”) filed in support of the Supplement.

16 I. **INTRODUCTION**

17 The Debtor’s Motion to Strike prayed for an order, *inter alia*, striking Proof of Claim No. 14
18 (“Claim No. 14”) and Proof of Claim No. 16 (“Claim No. 16”) on the grounds that said claims were
19 supported by the same fabricated piece of evidence—a falsified rendition of that certain “Operating
20 Agreement of Westcliff Investors, LLC” (the “Altered OPA”). Claim No. 14 was filed by Barry
21 Beitler (“Beitler”) and Claim No. 16 was filed by Beitler’s sister, Betsy Boyd (“Boyd”) (Beitler, his
22 related entity, Beitler & Associates, dba Beitler Commercial Realty Services (“BCRS”) and Boyd
23 are the “Beitler Parties” herein). (See Ex. 1 & 2, Motion to Strike).

24 The evidence submitted in connection with the Motion to Strike established that the Altered
25 OPA had been intentionally altered through the insertion of new re-typed pages. The inserted pages
26 incorporated modified text materially increasing Beitler’s rights and powers as a member and co-
27 manager of Westcliff Investors, LLC (“Westcliff”), and that materially reduced the Debtor’s rights
28

1 and powers as a member of this entity. The evidence further established that the Debtor's initials
2 had been forged on the inserted pages in an effort to match the corresponding initials appearing on
3 the original pages. (See RW Dec.).

4 After the Motion to Strike was filed, the Debtor carefully analyzed two additional Beitler
5 related claims: Proof of Claim No. 9 ("Claim No. 9") filed by BCRS, and Proof of Claim No. 11
6 ("Claim No. 11") filed by Beitler. (See Ex. 1 & 2, LG Dec.). This analysis revealed that both claims
7 were based upon an attached complaint that BCRS and Beitler had filed in the California Superior
8 Court. This complaint incorporated one of the material falsified provisions of the Altered OPA.

9 At the initial hearing on the Motion to Strike held on December 14, 2017, the Court advised
10 the parties that the evidence indicated a fraud may have been committed on the Court.¹ (LG Dec.
11 Ex. 3, P. 126, lines 11-14). Based upon this finding, the Court stayed all other matters in this case,²
12 scheduled a status conference on the matter for February 21, 2018, and advised the Debtor that this
13 continuance would allow for further discovery on the issues raised in the motion.³ (LG Dec. Ex. 3, P.
14 128, lines 24-25). In accordance with the latter expectation, the Debtor served focused discovery
15 upon the Beitler Parties and their counsel on December 28, 2018. (See Joint Discovery Stipulation,
16 dkt. Nos. 368 and 369 (hereinafter the "Discovery Stipulation")). As the Discovery Stipulation
17 makes clear, the Beitler Parties' responses to this discovery were either non-responsive or
18 impermissibly evasive.

19 At the February 21, 2018 status conference, the Debtor advised the Court that the Beitler
20 Parties had, in the main, failed and refused to respond to their discovery. The Debtor further advised
21

22 ¹ See Transcript of December 14, 2017 hearing (the "Transcript") ("It's risen to the level where there is
23 circumstantial evidence of a fraud on the Court.). (LG Dec. Ex. 3, P. 126, lines 11-14).

24 ² At a hearing held on March 8, 2018, the Court ruled that the plan of reorganization filed by the Debtor was a
25 liquidating plan. Accordingly, proceedings related to the Debtor's Plan and Disclosure Statement should
proceed, since the resolution of the disputes with the Beitler Parties would only affect the size of the pot being
distributed, not necessarily the confirmability of the plan.

26 ³ Transcript ("Because my thinking is, I'm going to continue this hearing and allow your discovery to provide
27 evidence. Because a fraud on the Court, even if alleged, is something that I take very seriously. I also take
very seriously the rights of counsels to protect themselves and their clients under operable aspects of the
evidence code."). (LG Dec. Ex. 3, P. 128, lines 24-25 and P. 129, lines 1-5).

1 the Court that the Beitler Parties' discovery stonewalling was designed to cause delay, increase
2 costs, and to deprive the Debtor of the ability to meet certain hard-and-fast deadlines relating to the
3 Debtor's reorganization effort. At the conclusion of this hearing, the Court issued an order setting
4 discovery deadlines and scheduled an evidentiary hearing on the discovery disputes for April 18,
5 2018.⁴ The Court advised counsel that it would take live testimony from the relevant witnesses at
6 this hearing.

7 At the initial hearing on the Motion to Strike, the Court advised the parties that it wanted to
8 obtain further clarity regarding certain issues before it ruled. These issues included where the
9 Altered OPA came from,⁵ whether the Altered OPA was intentionally attached to Claim Nos. 14 and
10 16, and whether the use of the Altered OPA at the deposition of the Debtor was a calculated attempt
11 to obtain an advantage. Notwithstanding the Beitler Parties' refusal to properly respond to the
12 Debtor's discovery regarding these matters, these questions can now be answered. The evidence
13 filed herewith and with the Motion to Strike, along with the analysis herein, establishes that (1)
14 Beitler's "office" was the source of the Altered OPA, (2) both Beitler and his counsel, Tom Lallas,
15 were fully aware of the fact that this document was attached to Claim No. 14 (at the very least), and
16 (3) the use of the Altered OPA at the deposition of the Debtor was in fact a calculated ruse
17 implemented to obtain an advantage.

18 At the hearing held on December 12, 2017, the Beitler Parties' counsel represented to the
19 Court that the fabricated evidence attached to Claim Nos. 14 and 16, the references to this fabricated
20 evidence in Claim Nos. 9 and 11 (collectively the "POCs"), and the use of the Altered OPA in the
21 Debtor's deposition were innocent mistakes by counsel. (Ex. 3, P. 96, lines 21-25, and Pgs. 95-97,
22 LG Dec.). The evidence, however, does not support these contentions. To the contrary, the evidence
23 establishes that these were carefully planned, premeditated actions.

24

25 ⁴ See Scheduling Order on Motion Seeking: (1) Disallowance of Claims 14 and 16; and (2) Striking Claims
26 Alleged in Adversary Nos. 8:17-ap-01094 and 8:17-ap-01092 on the Grounds the Same Were Filed Based
27 Upon Falsified Evidence, entered February 27, 2018 [Docket No. 339]. Consistent with Local Bankruptcy
Rule 9013-1, the Debtor has filed this Supplement more than twenty-one (21) days prior to the April 18, 2018
hearing, in order to provide the Beitler Parties with at least the standard motion practice response timeframes
(14 days prior to the hearing) to address any new issues raised by way of this Supplement.

28 ⁵ Transcript, LG Dec. Ex. 3, P. 129, lines 9-10.

The Beitler Parties’ attempt to escape recourse by attributing the entire matter to a mistake by counsel is also legally unavailing. Counsel did not sign the POCs—Barry Beitler and Betsy Boyd did. It was *they*, not counsel, who represented to the Court under penalty of perjury that *they* had “examined” the contents of the POCs. It was *they*, not counsel who represented, *after this examination*, that they have a “reasonable belief that the information is true and correct.” The Beitler Parties are certainly at liberty to come to Court, take the stand, and admit they committed perjury by not examining the POCs,⁶ and by falsely representing that they reasonably believed in the truth of the contents therein. However, even if the Court accepts this *mea culpa* as true, this merely changes the grounds for striking the POCs, it does not eliminate it. Four false claims were still filed in this case, and four false claims should still be stricken.

II. BACKGROUND

The Beitler Parties filed the following proofs of claim in the Debtor's chapter 11 case: (1) Claim No. 14 (filed by Beitler);⁷ (2) Claim No. 16 (filed by Boyd);⁸ (3) Claim No. 9 (filed by Beitler);⁹ (4) Claim No. 11 (filed by BCRS).¹⁰ In Claim Nos. 14 and 16, Beitler and Boyd represented under penalty of perjury that (1) the Altered OPA¹¹ was in fact the operating agreement governing the affairs of Westcliff, and (2) the Debtor breached the terms of this agreement by, *inter*

⁶ The opposition pleadings that the Beitler Parties filed in response to the Motion to Strike treat the filing of a proof of claim as a matter of no legal significance. That is not the case. In the opening paragraphs, the mandatory form advises the party signing the claim: “A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.” The signing party is further advised that his or her signature constitutes an attestation, under the penalty of perjury, that the signing party examined the claim and its contents and that the signing party believes the information therein is true (“I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.”).

⁷ Claim No. 14 is attached to the Motion to Strike as Exhibit “1.” Following the filing of the Motion to Strike, Beitler amended Claim No. 14 in an attempt to rectify the fraud.

⁸ Claim No. 16 is attached to the Motion to Strike as Exhibit “2.” Following the filing of the Motion to Strike, Boyd amended Claim No. 16 in an attempt to rectify the fraud.

⁹ Claim No. 9 is attached as Exhibit “1” to the LG Dec. (and is attached to the Reply to the Motion to Strike as Exhibit “A”).

¹⁰ Claim No. 11 is attached as Exhibit “2” to the LG Dec.

¹¹ See Ex. 1 & 2 Motion to Strike.

1 *alia*, failing to properly account for their capital contributions to Westcliff.¹² Neither contention was
2 true. As explained in the Motion to Strike and as further detailed herein, the Altered OPA is not the
3 authentic, duly executed and binding version of Westcliff's operating agreement (the "Authentic
4 OPA"). Rather, it is an intentionally fabricated document with falsified provisions that strip the
5 Debtor of critical rights and transfers those rights to Beitler.

6 In Claim Nos. 9 and 11, Beitler and BCRS represented under the penalty of perjury that the
7 information in these claims was true. (Ex. 1 & 2, LG Dec.). The primary document attached to both
8 claims is a complaint that Beitler and BCRS filed against the Debtor in the California Superior
9 Court, in 2014. Id. This filing was signed by Tom Lallas. Paragraph 27 of this complaint states:

10 Section 3.3 in the Westcliff Operating Agreement provides for BCRS to act as
11 broker and for sale and leasing commissions to be split equally between Beitler
12 and Bral:

13 "At all times, whenever a vacancy in the property becomes available, Beitler
14 Commercial Realty Services shall be hired for the leasing at market
15 commission rates. Bral and Beitler agreed to split equally (50%/50%) any
and all commissions for leasing paid if any. The same shall be true of any
commission on the future sale of the Property"

16 (See Ex. 1 & 2, LG Dec.). The foregoing language was taken from the Altered OPA. In fact, the
17 commission split in the Authentic OPA is 60% to Bral, 40% to Beitler.¹³

18 After the Beitler Parties filed the POCs, their counsel, Tom Lallas, conducted a deposition of
19 Debtor wherein he used the Altered OPA in the place of the Authentic OPA. When Debtor's
20 counsel pointed out the falsifications in this document, it was withdrawn. (SO Dec., ¶ 11).

21 The only real issue in contest is whether the use of the Altered OPA and provisions therefrom
22 as support for the POCs, and in the deposition, was intentional or inadvertent. The evidence filed
23
24

25

¹² Westcliff is owned 47.5% by the Debtor, 47.5% by Beitler, and 5% by Boyd (who received this interest as a
26 gift and did not contribute any capital to Westcliff).

27 ¹³ In this same pleading, Beitler and BCRS readily admit that the Debtor is the co-manager with Beitler of
28 three of four Beitler/Bral formed limited liability companies. However, when it comes to Westcliff, the
complaint is silent. This glaring omission is consistent with an intent by Beitler to use the Altered OPA as a
weapon in the future, when the time was deemed right.

1 herewith and in support of the Motion to Strike confirms that these actions were intentional, and
2 consequently the Motion to Strike should be granted.

3 A. The “Where Did It Come From” Inquiry Has Been Answered.

4 At the initial hearing on the Motion to Strike, the Court posed the following inquiry: “**All I**
5 **wanted to know was, isn't it important that we know where this document came from.”**
6 (LG Dec., Transcript, Ex. 3, P. 129, ., lines 9-10.). The answer to the foregoing question has
7 significant evidentiary import due to the nature of the Altered OPA. *This is a fabricated piece of*
8 *evidence with a clear target—the Debtor.* Each falsification in the Altered OPA materially and
9 detrimentally alters the Debtor’s rights as a co-manager and member of Westcliff, and
10 correspondingly improves Beitler’s rights. Accordingly, if Beitler was the source of this document,
11 the issue of intent would be transparent—to advance Beitler’s legal position through fraud.

12 Mr. Lallas, counsel to Beitler, in an attempt to preempt the threat posed by the Court’s likely
13 “where did this come from” line of inquiry, endeavored to eliminate it by making the following
14 pronouncements at the initial hearing:

15 There's no evidence to implicate Mr. Beitler in ...transmitting any document to
16 counsel, all of which is denied. So, those are undisputed facts and undisputed
17 truths.

18 See LG Dec., Transcript, Ex. 3, P 94, lines 2-6.

19 And the most important aspects of this motion are, it's undisputed that Mr. Beitler
20 did not provide that exhibit, the incorrect operating agreement to our law firm.

21 See LG Dec, Transcript, Ex. 3, P 97, lines 1-3. In fact, Mr. Lallas’ statements were false. The matter
22 was not “undisputed” at that point in time. Moreover, post-hearing discovery has revealed that, in
fact, Mr. Beitler, or more specifically his “office,” was the source of the Altered OPA.¹⁴

23 To quote Beitler’s response to the Debtor’s Request for Admission 28: “**Admitted on**
24 **information and belief that Beitler’s office provided a copy of the Different OPA to LSL.**” (See

25
26

¹⁴ Mr. Lallas, while declaring with the utmost certainty that Beitler was not the source of the Altered OPA, failed to
27 provide any inkling as to an alternative source of the document, likely because he knew that the Altered OPA had in fact
originated from Beitler’s office.

1 LG Dec., Ex. 4). The reference to the “Different OPA” in this response refers to the Altered OPA,
2 and LSL refers to Levy, Small & Lallas.¹⁵

3 Although Beitler will argue that the foregoing admission¹⁶ does not mean that he was the
4 source of the Altered OPA, this argument is untenable for the followings reasons:

- 5 1. Beitler owns and controls Beitler & Associates, Inc. (dba BCRS), the admitted
6 source of the document;
- 7 2. Beitler is deemed to have knowledge of his agent’s acts. Cal. Civ. Code § 2332;
8 and
- 9 3. The admission that the Altered OPA was “provided” to his counsel by his
10 office, without more, is compelling evidence of intent. There would be
11 absolutely no reason for Beitler or his “office” to provide this targeted weapon
12 to his counsel unless he intended counsel to use it, which in fact counsel did.

13 Inherent in Beitler’s “my office did it, not me” argument is the assumption that the Court will
14 accept the following premise: some unknown employee within Beitler’s office made the very precise
15 textual falsifications that appear in the Altered OPA, and then sent this document to Beitler’s counsel
16 without Beitler’s authorization and knowledge. Respectfully, this position is not just untenable, it is
17 absurd.

18 Fraudulent intent is invariably proven through circumstantial evidence. *See generally*
19 Bradford v. C.I.R., 796 F.2d 303, 307 (9th Cir. 1986) (“Circumstantial evidence may be used to prove
20 fraudulent intent.”); In re Woodfield, 978 F.2d 516, 518 (9th Cir. 1992) (“We may infer the intent
21 from the circumstances surrounding the transaction.”). The answer to the Court’s inquiry, to wit,
22 “where” did the document come from, is clear from the direct and circumstantial evidence that is now
23 before the Court—*It came from Beitler.*

24 **B. The Altered OPA Is Fabricated Evidence Not A “Version” of**
25 **The Authentic OPA As Suggested By The Beitler Parties.**

26

¹⁵ Beitler testified in the declaration that he provided in opposition to the Motion to Strike that *he* did not provide the
27 Altered OPA to his counsel. However, he failed to disclose that his “office” did so.

28 ¹⁶ As indicated in the Discovery Stipulation [Docket Nos. 368 and 369] this response does not comply with the
requirements of Federal Rule of Civil Procedure 36.

1 At the initial hearing on the Motion to Strike, counsel for the Beitler Parties suggested that
2 the Altered OPA was merely one of many versions of the Authentic OPA, and that his office
3 mistakenly delivered the wrong “version” to bankruptcy counsel as part of the preparation of the
4 POCs. (LG Dec. Ex. 3, Pgs. 113-114). This argument not only ignores the obvious, it postulates a
5 document creation methodology that is not only contrary to universal practice, but irrational.
6

7 It is certainly true that attorneys often have different versions of a client document on their
8 computers, as drafts. However, each version is created by making revisions to a prior version via
9 Microsoft Word. If these changes are saved into the existing document, then the prior version is no
10 more. The updated version becomes the operative document. This “saved over” version of the
11 original document does not have a separate Word footer. However, since “saving over” the original
12 document deprives others of comparing the changes (unless a PDF redline is created before the save-
13 over), it is common practice to save each version of a transactional document as a separate Word
14 document. The latter practice results in a new separate footer or document name for this new and
15 separate document.

16 Neither of the foregoing practices were used in the creation of the Altered OPA. The pages
17 in the Altered OPA that contain the falsified provisions, pages 4, 8, 12, 13 and 17 (the “Falsified
18 Pages”), have a different Microsoft Word footer than the footer that appears on the corresponding
19 pages in the Authentic OPA. (See Ex. 1, Motion to Strike). This means the following sequence was
20 followed by the party or parties who fabricated this document:

- 21 1. The Falsified Pages were retyped as a separate Word document thereby
22 generating the separate and identical footer on each of the Falsified Pages;
- 23 2. The Falsified Pages were converted into PDF form;
- 24 3. Bral’s initials were forged on each retyped page so they would appear to be the
25 same as the original pages, which contained his authentic initials; and
- 26 4. The Falsified Pages were inserted into the Authentic OPA in place of the original
27 pages, thereby creating the Altered OPA.

28 Collectively, the foregoing facts lead to only one conclusion: The creation of the Altered OPA
was an intentional scheme. No other conclusion is possible for a simple reason—A party who intended

1 to create another “version” of the Authentic OPA could have done so in just minutes on Word, and
2 then presented this updated “version” to the Debtor for signature. But then, therein lies the problem.
3 As previously testified to in connection with the Motion to Strike, the Debtor would never have signed
4 a version of the Authentic OPA that so detrimentally changed his rights. Thus, the creation of a
5 falsified construct of the original was necessary—the Altered OPA.

6 In closing on this particular topic, the Debtor would note the obvious. Mr. Beitler has admitted
7 that his “office” was the source of the Altered OPA. (LG Dec., Ex. 4). The easy and irrefutable way
8 for him to prove his “it was just another version” argument would be to produce the Word version of
9 the Altered Document as requested in discovery. Not surprisingly, he refused to do so, because it does
10 not exist, and if he attempted to create it, the “date created” data within Word would disclose this
11 fraud.

12 **C. The Question of Intent Has Been Answered.**

13 At the initial hearing on the Motion to Strike, Beitler submitted a declaration wherein he
14 testified that he is wholly ignorant of the Altered OPA and therefore blameless. (Dkt. No. 227).
15 Beitler’s counsel has attempted to buttress this testimony by representing that all actions cited in the
16 Motion to Strike were attributable to innocent mistakes by counsel. (LG Dec., Ex. 3, P. 96, lines 21-
17 25, and Pgs. 95-97). In the case of the POCs, Mr. Lallas represented to the Court that his partner, Mr.
18 Hurwitz, chose the wrong document folder when assembling the exhibits for the POCs. In the case of
19 the use of the Altered OPA at the deposition, Mr. Lallas, who took the deposition, represented that
20 this too was a mistake. (LG Dec., Ex. 3, Pgs. 95-97). According to Mr. Lallas, he was truly
21 “surprised” when opposing counsel stopped the deposition and pointed out that he was using a
22 falsified version of the Authentic OPA. (LG Dec., Ex. 3, P. 96, lines 6-9).

23 Neither of the foregoing contentions is credible. Let’s start with the largest of the elephants in
24 the room that Beitler and Lallas have studiously ignored—the Altered OPA itself. Beitler has
25 admitted that his “office” was the source of this document (LG Dec., Ex. 4), yet he has made no effort
26 to explain why his “office” was in possession of a fabricated document that purported to convey upon
27

1 him contract rights he never had. Beitler has also failed to explain why this document incorporates
2 five separate forged initials (those purporting to be the Debtor's).¹⁷

3 The Altered OPA did not create itself, nor, as explained above, was it created for "inadvertent"
4 use. This document is akin to a guided missile imprinted with a single programed target—the Debtor.
5 The fact that Beitler had this weapon in his office, under his control, given its nature and content, is
6 compelling, if not dispositive, evidence of his fraudulent intent.

7 A second elephant that neither Beitler nor Lallas has addressed is the rationale underlying *the*
8 *delivery* of Altered OPA—*a delivery that Beitler has admitted his office made* (despite Mr. Lallas'
9 assertions in Court to the contrary). (LG Dec., Ex. 4). Delivering a fabricated piece of evidence to
10 the law firm representing you in a case is an intentional act, not an "inadvertent" one. When that
11 fabricated piece of evidence incorporates falsified text materially detrimental to the rights of your
12 opponent in this same litigation case, the *mens rea* of the delivering party is not inadvertence. The
13 act is intentional, and the objective is transparent: To obtain an unfair litigation advantage by
14 deceiving the Court.

15 Lallas' insistence that he was unaware of the fact that the Altered OPA was a fabricated piece
16 of evidence when he used the same during the Debtor's deposition ignores a third elephant. *As of the*
17 *date that the deposition occurred, Lallas had been continuously representing Beitler and Boyd in*
18 *California Superior Court case Bral v. Westcliff Investors, LLC, BC 553693—since 2013 (the*
19 *"Dissolution Case"). (See Ex. 2, SO Dec.). This is the same case now being arbitrated before the*
20 *Judicial Arbitration and Mediation Service.*

21 One of the central issues in the Dissolution Case is whether the managerial deadlock existing
22 at Westcliff *arising from the co-equal managerial relationship of Beitler and Bral provided for in*
23 *Section 4.1 of the Authentic OPA justifies the dissolution of this limited liability company.*¹⁸

25 ¹⁷ As noted in the Discovery Stipulation, the interrogatories posed to Mr. Beitler and BCRS imposed upon them a duty to
26 investigate. Presumably Mr. Beitler will explain to the Court when he takes the stand how it came to pass that his
investigations never revealed the identification of the allegedly unknown person in his office who had the skills,
motivation and mendacity needed to create the Altered OPA.

27 ¹⁸ Notably, the co-managerial relationship that exists between Beitler and Bral in the Westcliff relationship is
28 not the outlier, it is a fixture in every case where Beitler and Bral hold membership interests in limited liability

1 In sum, when Mr. Lallas deposed the Debtor on November 15, 2017 and directed Mr. Bral's attention
2 to the falsified language in Section 4.1 of the Altered OPA, he knew this text was false.¹⁹

3 The manner in which Lallas focused his questions regarding the Altered OPA is also telling.
4 The Altered OPA is eighteen (18) pages in length and it has over sixty (60) separately numbered and
5 lettered paragraphs. Yet, Lallas' first question in reference to the Altered OPA focused on Section
6 4.1, a section that falsely stated Beitler was the sole manager of Westcliff, when in fact Beitler and
7 Bral are the co-managers of this entity. (LG Dec., Ex. 5, Pgs. 154-155). Lallas made a point of
8 asking the Debtor to read this section and then stated: "You understood, didn't you, that under
9 Section 4.1, Barry Beitler was the company's managing member?" (LG Dec., Ex. 5, Pgs. 154-155,
10 lines 19-20,). The Debtor then responded, "Until now, I did not, no." (LG Dec., Ex. 5, Pgs. 154-
11 155, line 22). This was an obvious set-up. It was not a mistake. Again, Lallas knew this provision
12 was false.

13 In the very next series of deposition questions, Mr. Lallas focused like a laser beam on a
14 second falsified provision within the Altered OPA, Section 3.3. (LG Dec., Ex. 5, Pgs. 155, lines 7-
15 20). Whereas the Authentic OPA states that the Debtor was entitled to 60% of Westcliff's leasing
16 commissions and Beitler 40%, the falsified text in the Altered OPA changed these percentages to
17

18 _____
19 companies together. Mr. Lallas is, again, uniquely well aware of this fact because he has pursued litigation on
20 behalf of Mr. Beitler against Mr. Bral in all of these business relationships in an effort to undo this very equal
21 co-managerial structure.

22 ¹⁹ Q: Would you please refer to page 4, Section 4.1.
A: Okay.

23 Q: Let's start with who had management powers. Would you read Section 4.1 silently to yourself.
A: Okay.

24 Q: You understood, didn't you, that under Section 4.1, Barry Beitler was the company's managing
member?

A: No. Until now, I did not, no.

25 Q: Do you see the language that says that?
A: I see it, yes.

26 Q: And you see the language that says "Unless otherwise limited by the articles or this agreement,
Barry Beitler shall have full, complete, and exclusive authority, power, and discretion to manage and
control the business, property, and affairs of the company?"

27 A: I see that.

28 (LG Dec., Ex. 5, Pgs. 154-155, lines 19-20,).

1 50%/50%. Id. Here again, this was an obvious and intentional set up. Again, Mr. Lallas knew this
2 language was false when he posed his questions.
3

4 Mr. Lallas' subsequent actions during this proceeding provide further compelling evidence of
5 the scheme in play at the deposition. When Debtor's counsel questioned Mr. Lallas regarding where
6 this falsified document came from, Mr. Lallas stated "It was produced by you." (LG Dec., Ex. 5,
7 Pgs. 155, lines 21-25). When counsel advised Mr. Lallas that the copy that he had in his possession
8 had different text, he stated "I can't speak to that," and then pointed to the bate-stamped numbers on
9 the document indicating it had been produced by Bral's counsel, Lobel, Weiland, Golden &
10 Friedman, LLP ("LWGF"). (LG Dec., Ex. 5, Pgs. 156, lines 1-6). *In essence, Mr. Lallas was*
11 *attempting to persuade opposing counsel that the appearance of LWGF's bate-stamp on the Altered*
12 *OPA necessarily eliminated any dispute regarding veracity of the Altered OPA.* In fact, Mr. Lallas
13 could "speak to" the Altered OPA's lack of veracity, since he knew this to be the case. He just
14 declined to do so.

15 After this second exchange, Bral's counsel insisted upon a break in the deposition. During
16 this break, the Debtor's counsel reviewed the files on his own laptop computer and found a pleading
17 that Mr. Lallas had filed in the Dissolution Case. A copy of the Authentic OPA was attached to this
18 filing. When counsel for Bral presented this pleading to Mr. Lallas and his co-counsel, Gary
19 Klausner, and once again questioned the veracity of the Altered OPA, Mr. Lallas set aside the
20 Altered OPA, without further explanation *and without any dispute.* (SO Dec., ¶ 11).

21 Respectfully, the Court has overseen the litigation raging in this case for over a year. *Does*
22 *the Court believe for an instant that Mr. Lallas would quietly set aside the Altered OPA at the*
23 *request of opposing counsel, without any protest whatsoever, if he had believed for an instant that it*
24 *was anything other than a fabrication?*

25 After the deposition, Bral and Sean A. O'Keefe, the attorney who was attending the
26 deposition as the Debtor's defense counsel, contacted Alan Friedman at LWGF to ascertain the facts
27 regarding Mr. Lallas' insistence that LWGF was somehow the source of the Altered OPA. This
28 conversation revealed the truth. The request for production of documents (the "RFP") propounded
by Beitler to Bral included the following request:

1 Any and all DOCUMENTS YOU relied on or referred to in connection with
2 preparing YOUR Chapter 11 Disclosure Statement and Chapter 11 Plan.

3 (RFP, Request No. 8). Since the Debtor had “referred” to the POCs in the Disclosure Statement,
4 copies of these documents were included in the five-thousand page bate-stamped production served
5 by the Debtor’s counsel in response to the RFP. (See, BG Dec.). When LWGF produced the bate-
6 stamped copies of Claim Nos. 9, 11, 14 and 16, counsel was unaware of the fact that a falsified
7 construct, the Altered OPA, had been either attached, or referred to in the POCs. Id.

8 It is critical for the Court to realize that LWGF produced complete copies of POCs, including
9 Claim No. 14, which appeared as BRAL0001084 through BRAL0001152 (the “Bate-Stamped Claim
10 No. 14”). (BG Dec.). Had Mr. Lallas handed Bate-Stamped Claim No. 14, *a document signed and*
11 *filed by Beitler*, instead of just the Altered OPA (one of the attachments thereto), Mr. Lallas’ ruse—
12 citing the LWGF bate-stamp as evidence of the document’s veracity—would not have succeeded.
13 Counsel for Bral would have simply pointed out the obvious: *Producing a copy of a Beitler court*
14 *filings as a part of a massive document production did not make this document a “LWGF document.”*
15 In sum, Mr. Lallas’ and Mr. Beitler’s deceit during the deposition, an intentional course of conduct,
16 succeeded, albeit temporarily, because either Mr. Lallas or someone acting under his direction
17 separated the Altered OPA from POC 14, and presented it to Bral as a stand-alone document.

18 When the Court questioned Mr. Lallas about the use of the Altered OPA during the
19 deposition, his explanation was the following:

20 One of my practices is not to mark duplicates of operating agreements as -- at a
21 deposition which could bear different Bates stamps. So, when I saw that we had an
22 index that said, same date, same operating agreement, different Bates stamps, I just
picked up the low number Bates stamp.

23 (LG Dec., Ex. 3, P. 117, lines 11-16). In sum, Mr. Lallas represented to the Court that he just
24 happened upon the Altered OPA by chance, and he was wholly unaware of the falsifications therein.
25 As the above analysis establishes, Mr. Lallas’ claims of ignorance are incredible. Moreover, *the*
26 *Altered OPA that Mr. Lallas used as an exhibit during the deposition was stripped out of Claim No.*
27 *14, again, a document that LWGF produced as a singular document.* LWGF never created an index

1 listing the Altered OPA as a separate document, and it would make no sense for Mr. Lallas' office to
2 create an index identifying a document individually that was just one part of another document.
3

4 What Mr. Beitler and Mr. Lallas fail to recognize is that the foregoing course of conduct in the
5 deposition confirms *they knew* that the Altered OPA was attached to Claim No. 14, since it was
6 extracted from this document in preparation for the deposition. This knowledge would have been
7 extant at least by early November, since the deposition occurred on November 15, 2017. If the act of
8 attaching this document (or referring to provisions therein) to Claims Nos. 9, 11, 14 and 16 was in
9 fact a mistake as represented, then Mr. Lallas and Mr. Beitler were duty bound under Federal Rules
10 of Civil Procedure 11 and 37 to *immediately* withdraw or amend these claims. See In re Luzier, 2014
11 WL 12799336, at *3 (Bankr. N.D. Ohio 2014); In re Hannon, 421 B.R. 728, 734 (Bankr. M.D. Pa.
12 2009) (“In addition, having stipulated that Countrywide has no procedure to adjust Proofs of Claim to
13 reflect a refund of a sheriff’s deposit (Doc. # 74, ¶ 27), the Court concludes that Countrywide
14 knowingly allowed the inaccurate Proof of Claim to be treated by the parties as accurate to the
15 detriment of others. The Court is compelled to forward this Opinion to the United States Attorney as
16 well as the United States Trustee for their determination as to whether a violation of 18 U.S.C. §
17 152(4) has occurred.”); *see also McGrath v. Zenith Radio Corp.*, 651 F.2d 458, 468 (7th Cir.), *cert.*
18 *denied*, 454 U.S. 835 (1981); Tcherepnin v. Franz, 393 F.Supp. 1197, 1217 (N.D. Ill. 1975
19 (failure to correct a misapprehension is fraud), *aff’d*, 570 F.2d 187 (7th Cir.), *cert. denied*, 439 U.S.
20 876 (1978). They did not do so until after the deposition, and in fact, not until after the Motion to
21 Strike had been filed, and then only because the Altered OPA had been discovered.

22 To summarize, the evidence establishes that the Beitler Parties did not act with inadvertence
23 in submitting, relying on and utilizing a fabricated piece of evidence in the POCs and later in the
24 deposition. The evidence establishes these were intentional acts, and in the case of the use of the
25 Altered OPA at the deposition, carefully scripted intentional acts. This abuse of the system should
26 not be allowed to stand. The Motion should be granted.
27
28

1 **III. SUPPLEMENTAL POINTS AND AUTHORITIES**
2 **IN SUPPORT OF MOTION TO STRIKE**

3 The Debtor hereby provides the following legal authorities to supplement those authorities
4 submitted in connection with the Motion to Strike and the Reply (which authorities are incorporated
5 as though fully set forth herein)²⁰ to address the doctrine of unclean hands, and the remedies that this
6 Court should apply as a consequence of the Beitler Parties' use of falsified evidence to gain a
7 litigation advantage against the Debtor in court proceedings, as well as other abuses of the
8 bankruptcy system.

9 **A. The Doctrine of Unclean Hands Prevents the Beitler Parties From Seeking Relief From**
10 **This Court**

11 One of the central tenets of a court of equity is that – no matter what rights a person may
12 have and what he or she may make of them in a court of law, such person must come to the court
13 with clean hands (and must keep them clean). If a person comes to court with unclean hands, that
14 person “will be held remediless in a court of equity.” *See e.g., Baek v. Halvorson (In re Halvorson)*,
15 2018 Bankr. LEXIS 413, at *43 (C.D. Cal. February 14, 2018) (*citing Keystone Driller Co. v.*
16 *General Excavator Co.*, 290 U.S. 240, 54 S. Ct. 146, 78 L.Ed. 293 (1933)). As set forth by the
17 United States Supreme Court in the seminal case of *Keystone Driller*:

18 It is one of the fundamental principles upon which equity jurisprudence is founded,
19 that before a complainant can have a standing in court he must first show not only
20 that he has a good and meritorious cause of action, but he must come into court with
21 clean hands . . . The governing principle is “that whenever a party who, as *actor*,
22 seeks to set the judicial machinery in motion and obtain some remedy, has violated
23 conscience, or good faith, or other equitable principle, in his prior conduct, then the
24 doors of the court will be shut against him in limine; the court will refuse to interfere
25 on his behalf, to acknowledge his right or to award him any remedy” . . . “A court of
26 equity acts only when and as conscience commands, and if the conduct of the plaintiff
27 be offensive to the dictates of natural justice, then, whatever may be the rights he
28 possesses and whatever use he may make of them in a court of law, he will be held
remediless in a court of equity.”

26
27 ²⁰ The legal authorities set forth in the Motion to Strike and the Reply, and application of the law to the factual
28 circumstances present in this case, also establish that the appropriate sanction for the Beitler Parties utilization
of falsified evidence is disallowance/striking of the POCs and the dismissal of the related nondischargeability
actions. (Motion to Strike, pages 10-13; Reply, pages 8-11). This relief is fully consistent with the relief that
could and should be granted by the Court under the doctrine of unclean hands.

1 *Id.* at 244-45 (*italics in original*). See also Dollar Systems, Inc. v. Avcar Leasing Systems, Inc., 890
2 F.2d 165, 173 (9th Cir. 1989) (the unclean hands doctrine “bars relief to a plaintiff who has violated
3 conscience, good faith or other equitable principles in his prior conduct.”).

4 The overriding purpose of the unclean hands doctrine is to protect the court. It is “a concept
5 designed to protect the court from becoming a party to the transgressor’s misconduct” and was
6 developed by courts of equity to protect the court itself (as distinguished from the litigants before it)
7 from becoming an “aider and abettor of litigants’ bad conduct.” See Halvorson, 2018 Bankr.
8 LEXIS, at 43, 57-58 (citing, *inter alia*, Hall v. Wright, 240 F.2d 787, 795 (9th Cir. 1957 (“In
9 applying the unclean hands maxim, the court is ‘concerned primarily with protecting its own
10 integrity from improper action by a party.”). Indeed, the party invoking the doctrine need not be
11 damaged, and the court may even raise it *sua sponte*. See e.g., Halvorson, 2018 Bankr. LEXIS, at
12 *58; Benninger v. First Colony Life Ins. Co. (In re Benninger), 357 B.R. 337, 350-51 (Bankr. W.D.
13 Penn. 2006 (citations omitted)).

14 The doctrine of unclean hands is a flexible concept, and a court of equity is not bound by
15 formula or restrained by any limitation that tends to trammel the free and just exercise of its
16 discretion. Halvorson, 2018 Bankr. LEXIS, at *55-56, 73 (citing, *inter alia*, Keystone Driller, 290
17 U.S. at 245-46. “Time and time again the courts have emphasized that the unclean hands doctrine is
18 wide-ranging and unconfined.” Halvorson, 2018 Bankr. LEXIS, at *56 (citations omitted).

19 The application of the unclean hands doctrine requires that there be a direct relationship
20 between the misconduct of a party (or parties) to the litigation and the matters at issue in the
21 litigation. Id. at *44-45. In other words, the misconduct and the matters at issue in the litigation
22 cannot be unconnected. Id. Where the alleged misconduct occurred during the very course of the
23 litigation between the parties, as in this case, the direct relationship requirement is satisfied – and
24 recovery by, or relief to, the offending party is barred. Id. at *45-47, 56-57 (rejecting an argument
25 that bad acts occurring after the filing of a complaint or a bankruptcy petition cannot be taken into
26 account by a court of equity as completely inconsistent with centuries of equity jurisprudence). “It is
27 well settled that one who comes into equity must come with clean hands and keep those hands clean
28 throughout the litigation.” Id. at *46-48 (emphasis added) (citing, *inter alia*, Hall v. Wright, 240

1 F.2d at 795). “[T]he misconduct need not be a crime or an actionable tort ... Any conduct that
2 violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to
3 invoke the doctrine.” *See Gugino v. Kerslake (In re Clark)*, 543 B.R. 16, 19-20 (Bankr. D. Idaho
4 2015) (*citations omitted*). Notably, and directly applicable to the case at bar, “[i]t is sufficient to bar
5 relief that plaintiff has been guilty of unconscionable conduct directly related to the cause of action,
6 *such as the fabrication of testimony, subornation of perjury or other like attempt to perpetrate a*
7 *fraud upon the court or take an unconscionable advantage of his adversary.*” *Halverson*, 2018
8 Bankr. LEXIS, at *49, n.81 (*emphasis added*) (*citing Mas v. Coca-Cola Co.*, 163 F.2d 505, 508 (4th
9 Cir. 1947

10 The application of the doctrine of unclean hands doctrine is especially appropriate if such
11 application “further[s] and advance[s] the public interest.” *See e.g., Halverson*, 2018 Bankr. LEXIS, at
12 *58 (*emphasis in original*); *Northbay Wellness Group v. Beyries*, 759 F.3d 956, 960 (9th Cir. 2015).
13 With respect to the public interest consideration, there is nothing more sacrosanct than protecting
14 against the utilization of fabricated evidence by a litigant in court proceedings – and this
15 consideration weighs heavily toward applying the doctrine of unclean hands to sanction the Beitler
16 Parties for their utilization of fabricated evidence in these, and related state court, proceedings. As
17 the Seventh Circuit stated in *Secrease v. W. & S. Life Ins. Co.*, 800 F.3d 397, 402 (7th Cir. 2015),
18 “falsifying evidence to secure a court victory undermines the most basic foundation of our judicial
19 system.” Indeed, falsification of evidence is deemed a fraud upon the court. *Plastech Holding Corp.*
20 *v. WM Greentech Auto. Corp.*, 257 F. Supp. 3d 867 (E.D. Mich. 2017). *See also Derzack v. Cnty.*
21 *of Allegheny, Pa.*, 173 F.R.D. 400, 412–413 (W.D. Pa. 1996) (collecting cases and holding that
22 evidence fabrication constitutes a fraud upon on the court), *aff’d sub nom. Derzack v. Cnty. of*
23 *Allegheny Children & Youth Servs.*, 118 F.3d 1575 (3rd Cir. 1997) (same); *Am. Rena Int’l Corp. v.*
24 *Sis-Joyce Int’l Co., Ltd.*, 2015 U.S. Dist. LEXIS 189271, at *71 (C.D. Cal. 2015) (“[I]t is well-
25 settled that fabricating and submitting knowingly false evidence amounts to willful and bad faith
26 conduct.”)). Application of the unclean hands doctrine to bar recovery by a litigant that has utilized
27 fabricated testimony to take advantage of an adversary, therefore, is necessary and appropriate. *See*
28 *e.g., Mas v. Coca-Cola Co.*, 163 F.2d at 508.

1 In this case, each of the foregoing considerations support the application of the unclean
2 hands doctrine to the Beitler Parties' actions in this case.²¹ Indeed, there can be no reasonable
3 dispute that the submission of falsified evidence by the Beitler Parties in these proceedings is
4 directly related to their claims against the Debtor and that the public interest weighs heavily in favor
5 of protecting the integrity of the court system by disallowing claims brought by a transgressor
6 utilizing fabricated evidence in a court proceeding.

7 The Beitler Parties' actions and wrongdoing include, among other things to be established in
8 connection with the hearing on the Motion to Strike, the following:

- 9 • Beitler reviewed, executed and filed, under penalty of perjury, Claim No. 14, referencing
10 and attaching the Altered OPA.²²
- 11 • Boyd reviewed, executed and filed, under penalty of perjury, Claim No. 16, referencing
12 and attaching the Altered OPA.²³
- 13 • Beitler and BCRS filed the State Court Complaint in the State Court Action, referencing
14 the terms of the Altered OPA, and continue to rely on such falsified document.
- 15 • Beitler reviewed, executed and filed, under penalty of perjury, Claim No. 11, referencing
16 the State Court Complaint and the terms of the Altered OPA, and continues to rely on
17 such false documents.
- 18 • Beitler filed a nondischargeability action against the Debtor, referencing Claim No. 11,
19 the State Court Complaint and the terms of the Altered OPA, and continues to rely on
20 such false documents.

21 ²¹ The doctrine of unclean hands also requires a balancing of the parties' respective wrongdoing. This aspect,
22 however, is not an issue in the present case. At issue here is the falsification of evidence by the Beitler
23 Parties, and the recurring violations of the automatic stay. There has been no such wrongdoing by the Debtor
24 in this regard. Moreover, to the extent the Beitler Parties were to somehow attempt to argue that the Debtor's
25 acts that resulted in their underlying claims are based on some "wrongdoing" by the Debtor, such argument
26 would fail as such claims are disputed and the merits thereof have not been established. Moreover, these
27 types of business disputes between partners would not outweigh the gravity of a litigant's submitting falsified
evidence in a court proceeding.

28 ²² As noted above, the amendment of Claim No. 14 by Beitler, after discovery of the fraud, does not eliminate
the underlying fraud.

29 ²³ As noted above, the amendment of Claim No. 16 by Boyd, after discovery of the fraud, does not eliminate
the underlying fraud.

- 1 • BCRS reviewed, executed and filed, under penalty of perjury, Claim No. 9, referencing
2 the State Court Complaint and the terms of the Altered OPA, and continues to rely on
3 such false documents.
- 4 • BCRS filed a nondischargeability action against the Debtor, referencing Claim No. 9,
5 the State Court Complaint and the terms of the Altered OPA, and continues to rely on
6 such false documents.
- 7 • Counsel to the Beitler Parties – with Beitler present and participating – utilized the
8 Altered OPA at the Debtor’s deposition in an attempt to prejudice the Debtor.
- 9 • In addition, as discussed in detail the Discovery Stipulation filed concurrently herewith
10 and in support hereof, in what could presumably only be an attempt to avoid the
11 discovery of evidence relevant to the present issues (including with respect to, *inter alia*,
12 the genesis of the fraud), the Beitler Parties have repeatedly stonewalled the Debtor’s
13 efforts to obtain discovery in connection with the hearing on the Motion to Strike. The
14 Beitler Parties’ non-compliance and failure to provide relevant evidence speaks
15 volumes, but it cannot be a basis for avoiding this Court’s review or avoiding the
16 imposition of appropriate sanctions for their improper conduct.
- 17 • Moreover, the Beitler Parties have repeatedly demonstrated their disregard for the
18 integrity of this Court, its orders and the protections of chapter 11 proceedings. This
19 disregard has been made clear not only through their submission of falsified documents
20 under penalty of perjury and by refusing to abide by this legally-imposed discovery
21 mandates, but by violating the protections of the automatic stay imposed by Section
22 362(a) of the Bankruptcy Code in at least two instances. The first, the post-petition
23 commencement of an appeal against the Debtor, required three written demands before
24 Beitler finally agreed to dismiss the offending action. The second, the post-petition
25 filing of a cross-complaint in connection with a pre-petition action filed by Mission

1 Medical Investors, LLC (“Mission”) against Beitler for breach of fiduciary duty,²⁴ is a
2 clear violation of the automatic stay, made even more egregious as it acknowledges the
3 Debtor’s bankruptcy filing and that a stay is in place. Yet, incredibly, by the cross-
4 complaint, Beitler seeks, among other things, a reduction of the Debtor’s interest in
5 Mission, all without seeking relief from this Court, despite the clear detrimental impact
6 said relief would have on the Debtor and his estate.²⁵ These flagrant, repeated, and
7 knowing violations of one of the most basic tenets of bankruptcy law serve to highlight
8 the Beitler Parties’ contempt for the protections of chapter 11, its processes and
9 procedures, and the Court that oversees such matters.

10 There is no logical or legitimate way to “explain” away the existence of the Altered OPA by
11 the Beitler Parties. This falsified document did not just appear out of thin air. To the contrary, the
12 Altered OPA was expressly and carefully crafted – and was utilized by the Beitler Parties in
13 numerous judicial contexts – for the express purpose of gaining a litigation advantage against the
14 Debtor. The Beitler Parties’ attempt to avoid this Court’s imposition of sanctions for such conduct
15 by dodging their discovery obligations and by failing to abide by the rules of this Court simply
16 magnifies their transgressions. Such abusive practices should not be countenanced by the Court.

17 Under the circumstances, the application of the unclean hands doctrine is clearly appropriate
18 in order to protect this Court (and the Debtor) from the Beitler Parties’ abuse of the judicial system
19 and its governing principles.

20 **B. The Beitler Parties’ Claims (and the Nondischargeability Actions Based Thereon)**
Should Be Disallowed Pursuant to the Doctrine of Unclean Hands

21 Where the unclean hands doctrine is applicable, the Court should “shut its doors against the
22 guilty parties, and to refuse to interfere on their behalf, to acknowledge their right or to award them

23
24 As the Court is aware, the issues between the Debtor and the Beitler Parties relate primarily to the disputes
25 over the dissolution of two liability companies holding the Debtor’s primary assets, Westcliff and Mission.
26 The Debtor has been seeking to sell those assets while market conditions are favorable and use his share of
27 the proceeds to fund his plan of reorganization. The Beitler Parties do not need the funds, and have refused to
consent to the Debtor’s monetization of these assets.

28 ²⁵ See, the Declaration of Jeffrey Alpert In Support of Opposition to Motion for Relief From the Automatic
Stay (Docket No. 321].

any remedy in these adversary proceedings.” Halvorson, 2018 Bankr. LEXIS, at *2; In re Still, 393 B.R. 896, 919 (Bankr. C.D. Cal. 2008) (application of the unclean hands doctrine “provides a complete defense to the plaintiff’s action.”). In the bankruptcy context, disallowance of proofs of claim filed by a claimant found to have unclean hands, has been found to be a proper remedy. See e.g., Benninger, 357 B.R. at 350-51, 360 (striking claimant’s nine (9) proofs of claims based on, among other things, the unclean hands of the claimant); New Valley Corp. v. Corp. Prop. Assocs. 2 and 3 (In re New Valley Corp.), 181 F.3d 517, 524-27 (3rd Cir. 1999) (discussing the applicability of the unclean hands doctrine in the context of disallowance of bankruptcy claims but finding that the unclean doctrine was not applicable under the facts of that case because, contrary to the instant case, there was no direct relationship between the wrongdoing and the claims asserted by way of the proof of claim). Likewise, a plaintiff deemed to have unclean hands cannot obtain a judgment of nondischargeability. See e.g., Northbay Wellness Group, 759 F.3d at 959; Republic of Rwanda v. Uwimana (In re Uwimana), 274 F.3d 806, 810 (4th Cir. 2001) (“A plaintiff with unclean hands is not entitled to relief from a court of equity in the form of an order denying the dischargeability of debt.” (*internal quotation marks omitted*), abrogated on other grounds by Bullock v. BankChampaign, N.A., 133 S. Ct. 1754, 1758-59, 185 L. Ed. 2d 922 (2013)).

Indeed, the gravity of utilizing falsified evidence is highlighted in the Halvorson decision itself, wherein the bankruptcy court detailed the underlying state court’s imposition of “harsh but just sanctions” against Mr. Halvorson for his utilization of a forged document (which falsification was accomplished through some sort of electronic cutting and pasting) at a deposition, notwithstanding Mr. Halvorson’s attempt (following discovery of the use of the false document) to “make everything right” through the submission of an errata sheet to the deposition testimony. Halvorson, at *4-5. The consequence of Mr. Halvorson’s use of the falsified document at the deposition was dismissal by the state court of all of his affirmative claims and counterclaims, dismissal of his defenses to the claims asserted against him and an award of \$750,000 in attorneys’ fees (as well as later criminal prosecution). Id. As in the Halvorson case, this case involves a similar use of a forged document at a deposition. This case, however, is even more egregious because the fabricated evidence here was also utilized in numerous court filings (including in the

1 POCs that were reviewed, signed and filed by the Beitler Parties' under penalty of perjury).²⁶ In
2 accordance with the authorities discussed above, therefore, dismissal of the Beitler Parties' POCs
3 and related nondischargeability actions against the Debtor in this case is an appropriate and justified
4 consequence for their utilization of falsified evidence.

5 **C. The Court Should Award to the Debtor His Attorneys' Fees and Costs as a Sanction
6 Against the Beitler Parties' Misconduct**

7 In addition, like the state court did in Halvorson, the Court should award to the Debtor the
8 attorneys' fees and costs that have been incurred in connection with this matter as an appropriate
9 sanction against the Beitler Parties for the use of falsified evidence and the failure to rectify the
10 wrongdoing. This is especially appropriate where these fees and costs have been incurred as a direct
11 result of the Beitler Parties' continuous abuse of the bankruptcy process, and where such fees and
12 costs would otherwise need to be borne by the Debtor, to his detriment and the detriment of the other
13 creditors of his estate.

14 It is beyond dispute that federal courts, including bankruptcy courts, have the discretion to
15 award attorney's fees and expenses as a sanction for misconduct based on their inherent authority, as
16 well as under, *inter alia*, Section 105(a) of the Bankruptcy Code. See e.g., John Richards Homes
17 Bldg. Co., L.L.C. v. Adell (In re John Richards Homes Bldg. Co., L.L.C.), 404 B.R. 220, 227 (E.D.
18 Mich. 2009) ("bankruptcy courts have both an inherent and a statutory power to issue sanctions ...
19 [which] can be applied to all instances of 'conduct which abuses the judicial process ...'"); In re
20 Mehlhose, 469 B.R. 694, 708-11 (Bankr. E.D. Mich. 2012) (discussing a bankruptcy court's inherent
21 and statutory authority under Section 105(a) to impose sanctions in the form of attorney's fees and
22 costs); Schwartz v. Kujawa (In re Kujawa), 256 B.R. 598, 610 (B.A.P. 8th Cir. 2000), *aff'd in part,*
23 *rev'd in part, on other grounds*, 270 F.3d 578 (8th Cir. 2001) ("Bankruptcy court had inherent
24 power, as well as power under [Rule 9011] to award sanctions").

25 As set forth by the United States Supreme Court in Chambers v. NASCO, Inc., 501 U.S. 32,
26 50, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991), "[w]hen there is bad-faith conduct in the course of

27
28 ²⁶ As in Halvorson, the Beitler Parties cannot "make everything right" by subsequent amendment to some
(but, notably in this case, not all) instances of the fraudulent usage.

1 litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the
2 Rules rather than the inherent power. But if in the informed discretion of the court, neither the
3 statute or the Rules are up to the task, the court may safely rely on its inherent power.”). With
4 respect to a court’s inherent power to impose sanctions, the U.S. Supreme Court has stated:

5 [A] court may assess attorney’s fees when a party has “acted in bad faith,
6 vexatiously, wantonly, or for oppressive reasons.” In this regard, *if a court finds*
7 *“that fraud has been practiced upon it, or that the very temple of justice has been*
8 *defiled,” it may assess attorney’s fees against the responsible party*, as it may
9 when a party “shows bad faith by delaying or disrupting the litigation or by
10 hampering enforcement of a court order[.]” The imposition of sanctions in this
11 instance transcends a court’s equitable power concerning relations between the
12 parties and reaches a court’s inherent power to police itself, thus serving the dual
13 purpose of “vindicat[ing] judicial authority without resort to the more drastic
14 sanctions available for contempt of court and mak[ing] the prevailing party whole
15 for expenses caused by his opponent’s obstinacy.”

16 Id. at 42 (emphasis added).

17 Likewise, the Ninth Circuit Court of Appeals recognizes a bankruptcy court’s inherent
18 authority to issue sanctions for misconduct. *See Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052,
19 1058-59 (9th Cir. 2009) (A bankruptcy court’s inherent power allows it to sanction “bad faith” or
20 “willful misconduct,” even in the absence of express statutory authority to do so. It also “allows a
21 bankruptcy court to deter and provide compensation for a broad range of improper litigation
22 tactics.”). *See also Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 551, 553 (9th Cir. 2004)
23 (affirming the decision of the Bankruptcy Appellate Panel for the Ninth Circuit, which affirmed a
24 bankruptcy court’s award of all reasonable attorneys’ fees and costs as a sanction under the
25 bankruptcy court’s inherent authority).

26 In addition to this Court’s inherent authority to sanction the Beitler Parties for their
27 misconduct, 11 U.S.C. § 105(a)²⁷ provides it with statutory authority to do so. Section 105(a)
28 provides bankruptcy courts with authority to award attorneys’ fees as a sanction for misconduct,

27 Section 105(a) of the Bankruptcy Code provides: “The court may issue any order, process, or judgment that
is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the
raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any
action or making any determination necessary or appropriate to enforce or implement court orders or rules, or
to prevent an abuse of process.” 11 U.S.C. § 105(a).

1 including where a litigant intentionally abuses the judicial process in an unreasonable and vexatious
2 manner. *See e.g.*, Mehlhose, 469 B.R. at 711 (discussing cases applying sanctions pursuant to
3 Section 105(a)) (“Sanctions are justified under § 105(a) where the sanctioning court has clearly
4 found that a litigant intentionally abused the judicial process in an unreasonable and vexatious
5 manner. Where a party unreasonably prolongs litigation, it is within the court's inherent equitable
6 authority to require that party to pay attorneys' fees.”) (*citations omitted*).
7

8 The Beitler Parties' bad faith and abuse of the bankruptcy system have caused the Debtor to
9 unnecessarily incur a significant amount of attorneys' fees and expenses in connection with the
10 claims asserted by the Beitler Parties based on falsified evidence and in connection with the Motion
11 to Strike. Accordingly, the Debtor requests that the Court award such fees and expenses to the
12 Debtor as a sanction under its inherent power and/or under Rule 105(a).
13

IV. CONCLUSION

14 Based on the foregoing, and for the reasons previously set forth in the Motion to Strike and
15 the Reply, the Debtor respectfully requests that the Court strike and disallow Claim Nos. 14, 16, 9
16 and 11, and strike the related nondischargeability actions, as a sanction for the Beitler Parties'
17 wrongdoing. In addition, the Debtor requests that the Court order that the Beitler Parties pay to the
18 Debtor his attorneys' fees and costs (in an amount to be established by proof) incurred in connection
19 with all disputes related to the Motion to Strike.
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1 Dated: March 26, 2018

Respectfully submitted,
PACHULSKI STANG ZIEHL & JONES LLP

2 aby: /s/ William N. Lobel

3 William N. Lobel

4 Special Reorganization Counsel for John J.
Bral, Debtor and Debtor-in-Possession

5 Dated: March 26, 2018

6 SHULMAN HODGES & BASTIAN LLP

7 By: ____

8 Alan J. Friedman

9 [Proposed] Attorneys for John J. Bral, Debtor
and Debtor-in-Possession

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

650 Town Center Drive, Suite 1500, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled **SUPPLEMENT TO MOTION SEEKING: (1) DISALLOWANCE OF CLAIMS 14 AND 16; AND (2) STRIKING CLAIMS ALLEGED IN ADVERSARY NOS. 8:17-AP-01094 AND 8:17-AP-01092 ON THE GROUNDS THE SAME WERE FILED BASED UPON FALSIFIED EVIDENCE [DOCKET NO. 219]** TO: **(A) INCLUDE DISALLOWANCE OF CLAIM NOS. 9 AND 11 IN THE RELIEF SOUGHT BY WAY OF THE MOTION TO STRIKE, AND (B) PROVIDE BRIEFING ON THE APPLICABILITY OF THE DOCTRINE OF UNCLEAN HANDS TO THE ISSUES RAISED BY WAY OF THE MOTION TO STRIKE AND THIS SUPPLEMENT AND THE APPROPRIATE REMEDY IN CONNECTION WITH THE MOTION TO STRIKE** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 3/26/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On 3/26/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 3/26/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

3/26/2018 Date	Nancy Lockwood Printed Name	/s/ Nancy Lockwood Signature
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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3. SERVED BY OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:

Via Overnight Mail:

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